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November 19, 1998

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4749

Dear Mr. Turley:

This letter is in response to your communication dated October 21, 1998 concerning a complaint filed by James M. Casso against Congresswoman-elect Grace Napolitano and her husband, Frank Napolitano. Our office previously filed a response to the complaint on behalf of Grace Napolitano.

Mr. Napolitano has also requested that we represent him in this matter. As you included only that portion of the complaint regarding alleged violations of the contribution limits (Number V), we are addressing only that portion of the complaint on behalf of Mr. Napolitano. If you wish to have Mr. Napolitano respond to any other allegations, please notify me.

Mr. Casso's complaint alleges that Grace Napolitano's use of her pension funds to support her candidacy violated the contribution limitations of the Federal Election Campaign Act (FECA) because those funds were subject to Frank Napolitano's community property interest under California law.

As a preliminary matter, we note that only a portion of those funds were earned during Grace Napolitano's marriage to Frank Napolitano. The Napolitanos were married in 1982, and Grace Napolitano retired in 1992. All pension funds earned prior to 1982 were Grace Napolitano's separate property under California law.

Mr. Napolitano acknowledges that he has a community property interest in any property acquired by Mrs. Napolitano after their marriage. However, it has always been his understanding that Mrs. Napolitano had legal ownership of all of the pension funds in her name, and that she had the legal right to control and dispose of those funds. He considered them to be completely her funds.

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He was not required to consent to her use of the funds, nor did he think his consent was necessary or appropriate. As set forth in our response on behalf of Mrs. Napolitano, this lack of joint control distinguishes this situation from other cases involving jointly titled assets.

In conclusion, Mr. Napolitano believed that the pension funds were Grace Napolitano's personal funds at all times and that they could be used to support her candidacy on an unlimited basis under the FECA and relevant regulations.

If additional information is needed, please contact me.

Very truly yours,

Sincerely,

OLSON, HAGEL, LEIDIGH,
WATERS & FISHBURN, LLP


DIANE FISHBURN

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